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612374—44

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 459

THOMAS CLYDE HELTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 70–74) has not yet been reported.

JURISDICTION

The judgment of the circuit court of appeals was entered July 17, 1944 (R. 69), and a petition for rehearing (R. 74–80) was denied August 14, 1944 (R. 81). The petition for a writ of certiorari was filed September 12, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII

of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether there was sufficient evidence to warrant submission to the jury of the issue whether petitioner knowingly interfered by force and violence with the administration of the Selective Training and Service Act and the regulations issued thereunder, in violation of Section 11 of the Act.

STATUTE INVOLVED

Section 11 of the Selective Training and Service Act of 1940, 54 Stat. 885 (50 U. S. C. App. 311), provides in part:

> * * * any person or persons who shall knowingly hinder or interfere in any way by force or violence with the administration of this Act or the rules or regulations made pursuant thereto * * * shall, upon conviction in the district court of the United States having jurisdiction thereof, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

STATEMENT

On July 29, 1943, petitioner was indicted in the United States District Court for the Middle District of Tennessee for violation of Section 11 of the Selective Training and Service Act of 1940

(R. 2–3). The indictment, in one count, charged that on or about June 10, 1943, petitioner knowingly interfered by force and violence with the administration of the Selective Training and Service Act and the rules and regulations issued thereunder by wilfully and unlawfully assaulting and wounding Dr. Andrew J. Jamison, an examining physician for Selective Service Board No. 1, Murfreesboro, Tennessee (R. 2). After a jury trial, petitioner was convicted (R. 6) and was sentenced to imprisonment for four years (R. 57). On appeal to the Circuit Court of Appeals for the Sixth Circuit, the judgment was affirmed (R. 69–74).

The Government's case was predicated on the theory that petitioner forcibly interfered with the administration of the Act and regulations by assaulting an examining physician for his local board because in the performance of his official duties the physician had found petitioner physically fit for military service. The pertinent evidence in this respect may be summarized as follows:

Petitioner, who was thirty-five years old at the time of his trial (R. 41), registered with his local draft board in October 1940 and on December 5, 1940, he was classified I–A (available for military service) (R. 20). On December 23 he reported for a physical examination, as directed by his board, and, in the absence of Dr. Murfree, the board's chief examining physician, he was examined by

Dr. Jamison, who was a duly appointed examining physician for the board (R. 20–21). In describing the examination Dr. Jamison testified: "I examined him in the routine way. Clyde [petitioner] told me that he had had a heart attack, or at least a fainting spell, in a barber shop in Murfreesboro sometime before, possibly a year or two before, also that he had suffered a sunstroke several years previously, and also a nervous breakdown. I examined his heart, and found nothing wrong with his heart, and thereupon told him that I had found him physically fit for military service. He complained of being nervous, and appeared to be nervous and I told him that the Army would or might be good for him, or good for his nerves. He told me that he did not know what his trouble had been when Dr. Murfree had him under his care and suggested that I talk to Dr. Murfree about his past illnesses or disorders. Since Dr. Murfree was out of town, a report of my examination was not made at that time as I expected him to sign the report as was our custom." (R. 24.) Shortly thereafter petitioner went to Dr. Jamison's office and told him that "Dr. Murfree wanted to do the whole physical examination, if it was satisfactory with me [Dr. Jamison], and I told him it would be entirely satisfactory with me" (R. 27). Dr. Murfree, apparently after examining petitioner, referred him to a Dr. Walton, a member of the medical advisory board for the local board, who found that peti-

tioner was suffering from "psychoneurosis hysteria." On January 31, 1941, petitioner was classified IV–F (physically unfit for military service), but on June 12, 1942, after another physical examination by Dr. Murfree, he was classified I–A. Thereafter, at the direction of his local board, petitioner reported for induction, but at the induction center he was rejected as a psychoneurotic. On July 27 petitioner was again classified IV–F, which was his classification at the time of his trial. (R. 21.)

The evidence relating to the assaulting of Dr. Jamison by petitioner shows that in the evening of June 10, 1943, the doctor, who at the time of the trial was 63 years old, was present in a Murfreesboro drug store seated at one end of the soda fountain and that petitioner was seated at the other end (R. 25). Dr. Jamison testified: "When I went up to the counter I did not say anything to the defendant Thomas Clyde Helton. I heard him say to the girls behind the counter, 'Do you know this man' and I heard one of the girls say that she did not. The defendant then said: 'This is the Doc.' I did not say anything. I heard the defendant Thomas Clyde Helton say again: 'Why, that is the Doc.' I still made no reply, nor did I say anything. As I finished my Coca Cola and was about to leave, the defendant walked back towards me and to my rear and said to me, 'I've got it in for you.' I made no reply to this remark and as I started toward the door of

the store he said, 'Did you hear what I said?' I told him I did, but that I had just considered the source and had paid no attention to him, or words to that effect. I then walked out towards the front of the store, and out of the store, and got in the left door of and into my car parked at the curb. As I sat down in my car and started to close the left door of the car, I saw the defendant Thomas Clyde Helton coming towards me, and I said to him: 'Clyde, go on, I don't want to have any trouble with you. You think I have been trying to put you in the Army for two years.' The defendant replied, 'Come on out and fight, you damned old son of a bitch,' then grabbed me by my arm and around my neck or shoulder and pulled me out of the car. He hit me several times with his bare fists and knocked me down. My head struck the paved part of the street or public square, near the curb, and I sustained a cut on the back of my head. While I was down and he was still hitting me, some soldiers came up and took the defendant off me and I got up. The soldiers turned the defendant loose, he came back and grabbed me again and jerked me down on the street, bruising my legs. Somebody pulled us apart and took the defendant away." (R. 25–26.) As a result of the beating Dr. Jamison suffered bruises on the face, arm, and knee, and discoloration of both eyes, but he was able to return to his work after remaining home for one day (R. 26).

Dr. Jamison further testified that prior to his examination of petitioner he had been a life-long friend of petitioner's family and for several years had been his mother's doctor and had also attended his brothers and sisters "on occasions" (R. 27), and that after the examination petitioner became "cold or less friendly or cordial towards me" (R. 24).

Immediately after the altercation a local policeman remarked to petitioner that he might have killed Dr. Jamison, to which petitioner replied: "I hope I did kill the son of a bitch, he's been trying to get me in the Army for the last two years" (R. 37, 53). After petitioner had been arraigned before a commissioner on the present charge he was interviewed by an F. B. I. agent to whom he stated that he had assaulted Dr. Jamison because he "had been trying to put him into the Army" and that, naming two other doctors, "several people had told him Dr. Jamison was trying to get him into the Army" (R. 39). Both of these doctors, when interviewed by the agent, denied having made such statements to petitioner (R. 39).

Some time prior to the altercation, the exact time not having been fixed in the record, petitioner encountered Dr. Jamison in a Murfreesboro drug store, and after the doctor had left the store petitioner stated to a clerk that he was going to "get" Dr. Jamison (R. 35). On another occasion, some

six months, or less, prior to the assault petitioner stated in a conversation with a group of men at a social club that he was willing to go into the Army, "but that he did not feel that he should be 'railroaded' into the Army as Dr. Jamison was 'Railroading' him" (R. 38).

Petitioner's defense was bottomed on a denial that his difficulties with Dr. Jamison stemmed from selective service matters and he claimed that, instead, they resulted from Dr. Jamison's alleged unseemly attentiveness to petitioner's wife on earlier occasions. In this respect petitioner testified that on June 9, the day before the altercation, "my wife had told me about Dr. Jamison coming in McCord and Harris Drug Store the day before, and standing and staring at her the whole time she was in the store" (R. 45–46); and that the next day, when he saw Dr. Jamison in the drug store, "I decided I would talk to him about it and let him know that I did not like his staring at my wife. I did not have in my mind to have any fight or difficulty with him but simply intended to talk and let him know that I did not appreciate his conduct." Thereafter, petitioner testified, when Dr. Jamison went out to his car, he remonstrated with him about the staring incident and the doctor denied it "and he leaned over towards the right side * * * of his car. I thought he had a pistol or some other weapon in the car pocket and was trying to get it"; it was then that

he grabbed the doctor's arm and the fracas began (R. 46–47.)

Petitioner did not relate the alleged staring incident to the F. B. I. agent when explaining to him why he had assaulted Dr. Jamison (R. 54), and Dr. Jamison denied the incident or that he was in the drug store at all on June 9 (R. 53–54).

ARGUMENT

Petitioner's sole contention (Pet. 4, 13–17, 18–21, 24–43) is that there was not sufficient evidence of petitioner's guilt to warrant submission of the question to the jury. Specifically, he asserts that the evidence was insufficient to permit a determination by the jury (1) that the assault grew out of Dr. Jamison's performance of his official duties; (2) that it caused an actual hindrance or interference with the administration of the Act; and (3) that petitioner knowingly hindered the administration of the Act.[1]

It is undisputed that petitioner unjustifiably administered a severe beating to Dr. Jamison. The crucial fact question is whether that beating was traceable to Dr. Jamison's official action as an

[1] Since the court's charge to the jury does not appear in the transcript of record, it must be assumed that the jury was correctly instructed as to the elements of the offense. *Moore* v. *United States*, 128 F. (2d) 887 (C. C. A. 5); *Keys* v. *United States*, 126 F. (2d) 181, 185 (C. C. A. 8), certiorari denied, 316 U. S. 694; *United States* v. *Gardzielewski*, 125 F. (2d) 138, 141 (C. C. A. 7), certiorari denied, 315 U. S. 823; *United States* v. *Waldon*, 114 F. (2d) 982, 984 (C. C. A. 7), certiorari denied, 312 U. S. 681.

examining physician for petitioner's local draft board. While the Government's evidence on this question may not have been so conclusive as to have compelled the conviction, we think that viewing it as a whole and in the light most favorable to the Government (*Glasser* v. *United States*, 315 U. S. 60, 80) it was sufficient to warrant submission of the question of petitioner's guilt to the jury.

The Government's evidence, summarized in the Statement, *supra*, pp. 3–8, shows that petitioner's ill feeling toward Dr. Jamison commenced after he had been examined by the doctor in the latter's capacity as an examining physician for the local board. Despite petitioner's claim that he had a heart condition and that he also had a nervous condition, Dr. Jamison found no heart ailment and, suggesting to petitioner that service in the Army might be good for his nerves, he found that petitioner was physically fit for military service. That petitioner was displeased by Dr. Jamison's findings is evident from the fact that without delay he arranged to have another complete examination by a different examining doctor for the board. It was likely that the conclusion of that doctor and another to whom petitioner was referred that he was not physically fit for military service confirmed in petitioner's mind his suspicion that Dr. Jamison unjustifiably sought to procure his induction into the Army. Recognizing these facts, petitioner argues, in substance, that

since the assault occurred more than two years after these events, the jury was not entitled to find that it was motivated by what occurred at that time. This argument, however, overlooks the fact that other evidence before the jury supports the inference that the animosity which developed in December 1940 manifested itself at the time of the assault because petitioner continued to believe that Dr. Jamison was using his official position as an examining physician for the local board to procure petitioner's induction into the Army.

The evidence in this respect shows that immediately after the altercation petitioner stated to two Murfreesboro policemen that he hoped he had killed Dr. Jamison because he "had been trying to get me in the Army for the last two years." Thereafter, after he had been arraigned before a commissioner on the present charge, petitioner explained to an F. B. I. agent that he had assaulted the doctor because "he had been trying to put him into the Army." Petitioner's conduct prior to the assault was consistent with these subsequent explanations. Not only did he become "less friendly" toward Dr. Jamison after the doctor had found him physically fit for military service, but thereafter on one occasion, after he had encountered the doctor in a Murfreesboro drug store, petitioner stated to a clerk of the store that he was going to "get" Dr. Jamison. On another occasion within six months prior to the altercation, petitioner stated publicly at a social club

that he believed Dr. Jamison was attempting to "railroad" him into the Army. In the absence of any credible explanation by petitioner, we think the jury was entitled to find that these statements both before and after the crime reflected petitioner's belief that during the entire period Dr. Jamison had used his official position as an examining physician for the local board to procure petitioner's induction into the armed forces, and that the assault was occasioned by petitioner's dissatisfaction with these supposed activities by the doctor.

Since, as the jury necessarily found, the assault on Dr. Jamison bore a direct relation to his status as examining physician for the local board, it follows under the decided cases that it was an interference by force and violence with the administration of the Act. *Burwell* v. *United States,* 137 F. (2d) 155 (C. C. A. 4); *Moore* v. *United States,* 128 F. (2d) 974 (C. C. A. 5); cf. *Bagley* v. *United States,* 136 F. (2d) 567 (C. C. A. 5). For while such an assault may have been motivated by past official action, its foreseeable effect extended to the future actions of the person assaulted as well as the persons working with him. Thus, in this case, despite the fact that petitioner was at that time classified IV–F, he was still within the jurisdiction of the local board and his classification was still a matter for re-examination by the board. (Selective Service Regulations 626.1, 626.2, 626.11X626.14.) There still remained the possibility that petitioner would be subjected to

further physical examinations to determine whether the earlier diagnosis was correct and whether his physical condition had improved since the earlier examination. Moreover, Dr. Jamison and other officials of the Selective Service System were concerned with classifying other registrants in petitioner's locality, and in administering the Selective Service process it was, of course, essential that these persons should be free to exercise their judgment unhampered by fear of violence at the hands of dissatisfied registrants. In short, an assault upon a selective service official because of dissatisfaction with his judgment in the performance of his official duties is inherently coercive and thereby impairs the successful functioning of the Selective Service System. While the Government offered no direct proof that such consequences actually followed from petitioner's misconduct, we submit that on the facts before it the jury was entitled to infer that such interference did result from the assault upon Dr. Jamison. Cf. *O'Hare* v. *United States,* 253 Fed. 538, 540 (C. C. A. 8), certiorari denied, 249 U. S. 598; *Doe* v. *United States,* 253 Fed. 903, 906 (C. C. A. 8).

Finally, it is plain that petitioner knew that Dr. Jamison was an official examining physician for the local board, that the doctor had examined him in the performance of his official duties, and that petitioner believed that the doctor was using his official status to procure his induction into the Army. Since the assault on the doctor was pur-

poseful and, as we have shown, since the jury was entitled to find that it stemmed from the doctor's official status, we think it follows that petitioner's interference with the Selective Service Administration was knowingly accomplished.[2]

CONCLUSION

The decision below is correct and the case presents no conflict of decisions or question of general importance. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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OCTOBER 1944.

[2] Petitioner's reliance (Pet. 42–43) on the rule that a conviction may not be based solely upon a subsequent extra-judicial confession is misplaced. For here, in addition to the subsequent extra-judicial statement, the corpus delicti was established by direct testimony concerning the assault and by the defendant's statements prior to the offense. See *Warzower* v. *United States*, 312 U. S. 342.

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